

RECEIVED

DEC 18 2000

FCC MAIL ROOM

Before the
Wireless Telecommunications Bureau
Commercial Wireless Division
Policy and Rules Branch
Washington, D.C., 20554

DOCKET FILE COPY ORIGINAL

In the Matter of)
)
Petition for Declaratory Ruling that Western)
Wireless Basic Universal Service in Kansas) CC Docket No. 00-239
Is subject to regulation as Local Exchange) DA-00-2622
Service)

Comments of WARINNER, GESINGER & ASSOCIATES, LLC

Warinner, Gesinger & Associates, LLC (WGA) joins the State Independent Alliance (SIA) and Independent Telecommunications Group (ITG) in asking the FCC for a declaratory ruling clarifying that Western Wireless Basic Universal Service (BUS) offering is not commercial mobile radio service (CMRS). Also, that federal law does not preempt or preclude the Kansas Corporation Commission (KCC) from applying the regulations and state Universal Service Fund (USF) requirements, that are applicable to all local exchange carriers and to Eligible Telecommunications Carriers (ETC) in Kansas, to Western Wireless.

Western Wireless seeks distinction as a CMRS carrier to gain exclusion from state regulatory requirements yet seeks state ETC designation to gain state USF. This creates a split-level playing field with rural LECs being required to meet a much higher service standard than CMRS providers. WGA contends that federal CMRS distinction and ETC

No. of Copies rec'd 0
List A B C D E

designation for federal USF is separate and distinct from Kansas State laws and rules for ETC designation and state USF eligibility.

WGA would like to comment on two federal codes addressing CMRS carriers. In the Statement of Opposition¹ it was stated (page 28, footnote 25) that by using 47 U.S.C. 251 (f) (1) Western Wireless has effectively avoided KCC entry regulation. WGA submits that this rule only gives Western Wireless, as a CMRS carrier, the right to entry and interconnection without requiring the KCC to lift the rural exemption. This rule does not state that it removes Western Wireless, as a CMRS carrier, from state regulation. In fact 47 U.S.C. 332 (c) (3) (A) states specifically what a State commission can and cannot do:

“no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates”.

This rule says that a State Commission is preempted from regulating CMRS entry and the rates charged. However, it also states that the CMRS carrier is not exempt from the requirements imposed by a State Commission on all providers of telecommunications services. WGA interprets this rule as saying the KCC cannot prevent Western Wireless from serving as a CMRS carrier but can require Western Wireless to meet State laws and regulations, including USF requirements.

¹ Kansas Docket No. 99-GCCZ-156-ETC, Statement of Opposition to WWC, Holding Co., Inc.’s d/b/a Cellular One BASIC UNIVERSAL SERVICE OFFERING IN KANSAS

In summary, WGA asks along with SIA and ITG that Western Wireless BUS service offering be ruled a fixed offering and as such not be exempt from state regulations. In addition WGA believes that the rules cited above show that whether Western Wireless BUS is CMRS or fixed wireless local loop service it is not exempt from the state regulations imposed on all providers of telecommunications services.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "William J. Warinner", with a long horizontal flourish extending to the right.

William J. Warinner
CPA, Principal
Warinner, Gesinger & Associates, LLC
10901 W 84th Terrace, Suite 101
Lenexa, Kansas 66214
Telephone # 913-599-3236

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Comments of WARINNER, GESINGER & ASSOCIATES, LLC were mailed first class or by electronic delivery on December 13, 2000.

By:



The following parties were served:

Magalie Roman Salas *
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, DC 20554

Rose Crellin
Federal Communications Commission
445 12th Street, S.W., Room 4A-160
Washington, DC 20554

Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 4A-207
Washington, DC 20554

Public Reference Room
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

International Transcription Service, Inc. **
445 12th Street S.W., Room CYB-400
Washington, DC 20554

* delivery by ECFS

** w/ diskette